

MHND19-001080-2023



Order below Exh. No. 14
(Passed on 10.02.2025)

1. By this application, the plaintiff is seeking order of temporary injunction against the defendant No. 4 to 9 by invoking the provisions under Order XXXIX Rule 01 and 02 of the Code of Civil Procedure. (hereinafter referred as CPC)

2. Read application and say filed by defendant No. 1 to 7. The defendant No. 1 to 7 filed their written statement vide Exh. 23 and thereafter they filed pursis vide Exh. 24 wherein they stated that the said written statement be considered as their say to the present application. The summons were duly served to defendant No. 8 and 9 however, they failed to approach before the Court, hence, suit proceed Ex-parte against them. Heard, Shri G.S. Dange, advocate for the plaintiff and Shri S.G. Jadhav, advocate for the defendant No. 1 to 7. Perused record of the case and accompanied documents.

3. Upon considering the contentions of rival parties, the following points are formulated for my

determination and I have recorded my finding thereon for the reasons given thereunder -

Sr. No.	Points for determination	Findings
1.	Whether the prima facie case is established in favour of the Plaintiff?	<i>In the Negative.</i>
2.	Whether the balance of convenience lies in favour of the Plaintiff?	<i>In the Negative.</i>
3.	Whether the Plaintiff would suffer from irreparable loss, if the injunction is refused?	<i>In the Negative.</i>
4.	What Order?	<i>Application is Rejected.</i>

4. In support of the application, the plaintiff relied upon 7/12 extract of Gut No. 55 of village Kivla, Tq. Loha, Dist. Nanded, mutation entry No. 390, xerox of certified copy of sale deed bearing No. 1754/1999 dt. 28.05.1999, mutation entry No. 509, toch map, K Prat (क.प्रत), measurement map, copy of panchanam of fixation of boundary, copy of panchanama of measurement of Gut No. 55. Per contra, defendants filed mutation entry No. 490, 492 and 7/12 extract of Gut No. 46 standing in the name of defendant No.1 Vijay Tarke.

REASONS**As to Point No. 1 to 4**

5. All these points are interlinked to each other. The prima facie evidence available on record is appears to be common, hence, they are taken jointly for discussion.

6. It is contended by the plaintiff that land of 1 H 21 R was received by him in partition from his father in the year 1997 in Gut No. 55. He further contended that after two years on 28.05.1999 he purchased 40 R southern side of the said Gut number from one Mr. Madhav Dattaram Tarke by way of sale-deed bearing No. 1754/1999. An accordingly mutation entry 509 is carried out. In this way the plaintiff is the owner and possessor of 1 H 61 R. The present suit is filed against defendant No. 1 to 9 wherein he seeking possession of 16 R land from defendant No. 1 to 3 whereas he seeking prohibitory order from defendant No. 4 to 9 and defendant No. 1 in the form that they should not disturb peaceful possession. However, the present application filed against defendant No. 4 to 9 only and as it is stated above defendant No. 8 and 9 has not approached to the Court.

7. It is contention of the plaintiff that he is owner and possessor of 1 H 61 R land. The land of defendant No. 1 to 3 is to the western side of the Gut No. 55 belonging to

him. He further contended that one Nala is situated to the southern side of his land which is lying east-west. By way of this application the plaintiff is only seeking injunction from defendant No. 4 to 9 that they shall not disturb his peaceful possession in 1 H 45 R land which is remaining out of his land as defendant No. 1 to 3 has encroach upon his 16 R land from western side.

8. In order to establish his prima facie case he relied upon 7/12 extract of his Gut No. 55, mutation entry 390, sale deed bearing No. 1754/1999, mutation entry No. 509, measurement map and panchanama. The suit is filed for recovery of 16 R land from defendant No. 1 to 3. The above documents shows that the plaintiff is the owner of 1 H 61 R land. However, it is contention of the plaintiff that defendant No. 1 to 3 have encroached upon his land from western side and by way of this application he seeking injunction against rest of the defendants restraining them from disturbing his peaceful possession of his remaining land. By way of this application he is also seeking restraining order against defendant No. 4 to 9 that they shall not disturb the peaceful possession over the east-west Nala situated at the southern side of his land. To show this he has to establish that he is having possession over the said Nala. However, there is no document showing the same. Though it is seen on record that he is owner of 1 H 61 R

land yet there is nothing on record to show that it is the defendants No. 1 to 9 that they have encroached upon the same. Similarly, it is the matter of the evidence the same need not to be considered at this juncture. Hence, It is not justifiable to grant injunction in favour of plaintiff as he has failed to establish the prima facie case. The balance of convenience also does not lie in his favour as the above point is matter of evidence. Similarly, no irreparable loss shall cause to the plaintiff in case of rejection of this application. Therefore, the plaintiff failed to establish three golden rules for granting temporary injunction in his favour. Therefore, the application for temporary injunction is liable to be rejected. Hence, I answer points No. 1 to 3 in the negative and in answer to point No. 4, I pass the following order.

ORDER

1. The application of Temporary Injunction (Exh. 14) is hereby **Rejected.**
2. Costs in cause.

(Order is dictated and pronounced in open Court.)

Place:- Loha
Date 10-02-2025

(Smt. P V. Chidre)
2nd Jt. Civil Judge (Jr. Div.)
Loha, Dist. Nanded.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per original order.

Name of the Stenographer (Grade-III)	Vaibhavsing N. Thakur
Name of Court	2 nd Jt. Civil Judge (Jr. Div.) Loha, Dist. Nanded.
Date of dictation	10-02-2025, (Dictated on Computer)
Order signed by the PO on	10-02-2025
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